

Office of the Secretary of Defense

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death of an employee due to an employment related accident, casualty or disease. The common characteristic of such a plan or program is the provision of compensation regardless of fault, in accordance with a delineated schedule based upon loss or impairment of the worker's wage earning capacity, as well as indemnification or compensation for medical expenses relating to the employment related injury or disease. A workers' compensation program or plan includes any such program or plan:

(1) Operated by or under the authority of any law of any State (or the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands).

(2) Operated through an insurance arrangement or on a self-insured basis by an employer.

(3) Operated under the authority of the Federal Employees Compensation Act or the Longshoremen's and Harbor Workers' Compensation Act.

[57 FR 41103, Sept. 9, 1992. Redesignated and amended at 65 FR 7729, 7731, Feb. 16, 2000; 67 FR 57742, Sept. 12, 2002]

PART 222—DOD MANDATORY DECLASSIFICATION REVIEW (MDR) PROGRAM

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APPENDIX A TO PART 222—ADDRESSING MDR REQUESTS.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 76 FR 80745, Dec. 27, 2011, unless otherwise noted.

§ 222.1 Purpose.

This part implements policy established in DoD Instruction 5200.01. It assigns responsibilities and provides procedures for members of the public to request a declassification review of information classified under the provisions of Executive Order 13526, or predecessor orders.

§ 222.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within DoD (hereafter referred to collectively as the "DoD Components").

§ 222.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

Foreign Government Information (FGI). Defined in DoD 5200.1-R (available at <http://www.dtic.mil/whs/directives/correspdf/520001r.pdf>).

Formal Control System. A system designed to ensure DoD Component accountability and compliance. For each MDR request, the system shall contain, at a minimum, a unique tracking number, requester's name and organizational affiliation, information requested, date of receipt, and date of closure.

Formerly Restricted Data. Defined in DoD 5200.1-R.

MDR. The review of classified information for declassification in response to a declassification request that meets the requirements under section 3.5 of Executive Order 13526, "Classified National Security Information," December 29, 2009.

Restricted Data. Defined in DoD 5200.1-R.

§ 222.4 Responsibilities.

(a) The Director, Washington Headquarters Services, shall process MDR requests for OSD, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, and DoD Components not listed in the Appendix A to this part.

(b) *Heads of the DoD Components.* The Heads of the DoD Components listed in the Appendix A to this part shall:

(1) Establish procedures for the processing of MDR requests and appeals for information originating within the Component.

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(2) Appoint an appellate authority to adjudicate MDR appeals for the Component.

§ 222.5 MDR processing procedures.

(a) *General.* The DoD Components shall process MDR requests from the public for classified information originating within the DoD Component in accordance with DoD 5200.1-R and 32 CFR part 2001.

(b) Information not subject to review for public release under the MDR includes:

(1) Unclassified information (to include documents) or previously classified documents that are declassified prior to the receipt of the MDR request. These documents must be requested under the provisions of 5 U.S.C. 552(b) (also known and hereinafter referred to as the “Freedom of Information Act”) (FOIA) and 32 CFR part 286.

(2) Information (to include documents) reviewed for declassification within 2 years preceding the date of receipt of the MDR request. If this is the case, the requester shall be provided the documents as previously released and advised of the right to appeal to the DoD Component within 60 days unless the documents are already under appeal to the Interagency Security Classification Appeals Panel (ISCAP).

(3) Information exempted from search and review by statute of 50 U.S.C. 431, 432, 432a, 432b, and 432d.

(4) Documents originated by the incumbent President; the incumbent President’s White House Staff; committees, commissions, or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President.

(5) Information marked as Restricted Data or Formerly Restricted Data.

(6) Information that is the subject of pending litigation.

(c) *MDR Requester Guidelines.* Members of the public seeking the declassification of DoD documents under the provisions of section 3.5 of Executive Order 13526, and 50 U.S.C. 431, 432, 432a, 432b, and 432d shall:

(1) Address the written request to the appropriate DoD Component listed in the appendix to this enclosure.

(2) Identify the requested document or information with sufficient specificity to enable the DoD Component to locate it with a reasonable amount of effort. Information that would provide the sufficient specificity would include a document identifier such as originator, date, title, subject, the National Archives and Records Administration accession number, or other applicable unique document identifying number. Broad or topical MDR requests for records on a particular subject, such as “any and all documents concerning” a subject do not meet this standard.

(3) Include a correct return mailing address with the request.

(4) Include a statement that the requester understands that the request may incur processing charges in accordance with paragraph (k) of this section.

(d) *Receipt and Control.* Upon receipt of an MDR request, the DoD Component shall send the requester an acknowledgement and open a file in a formal control system. The acknowledgement shall include the tracking number and date of receipt of the request.

(e) *Simultaneous MDR and FOIA Requests.* DoD Components should be aware of possible requests under both the MDR and the FOIA. In accordance with 32 CFR part 286, if a requester asks for the same information under the FOIA and the MDR, the DoD Component shall ask the requester to select only one process. If the requester does not select a process, the DoD Component shall process the requested information under the FOIA.

(f) *MDR Document Review Process.* (1) Requests normally will be processed on a first in first out basis by date of receipt.

(2) Every effort shall be made to ensure that a response to an MDR request is provided to the requester within 1 year from the date of receipt.

(3) The DoD Components shall conduct line-by-line reviews of documents responsive to an MDR request to determine if the information contained within the documents continues to adhere to the standards for classification according to Executive Order 13526 Classified National Security Information. This line-by-line review must